

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 322 1974Bill H _____ S 670 Original bill & history ____cH. Committee on Bus & Industry

Hearing Date(s) _____ c

3/4 ✓c

_____ c

_____ c

Date Out 3/4 ✓cS. Committee on Bus & Industry

Hearing Date(s) _____ c

2/4 ✓c2/11 ✓c

_____ c

Date out 2/15 ✓

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 4, 1974

The tenth meeting of the Business and Industry Committee was called to order by Chairman DeWolfe on the above date in Room 415 of the State Capitol Building at 11 a.m.

POLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 658: Declaring a policy for the allocation of natural gas and providing for the implementation of such policy by the public service commission.

Senator Darrow appeared in support of the bill stating this bill deals with one aspect of the shortage. The author also supplied written amendments proposed for the bill to insert the words and figures 60 MCF and 500 MCF per year wherever needed.

Bob Corfett, Montana Power Company, appeared in opposition to the bill stating that the bill was premature at this time. Peter Pauly, Montana Dakota Utilities, concurred with the amendments but opposed the bill as presently written.

CONSIDERATION OF SENATE BILL 624: Relating to the meetings, power and duties of the consumer counsel act.

Senator Klindt was present to appear in support of the bill. Geoffrey Brazier, Consumer Counsel, suggested a proposed amendment to achieve flexibility to let the consumer counsel meet in case of emergency more often than every three months. It was brought out that there could be future problems and the consumer counsel could not be of any help to the consuming public.

CONSIDERATION OF SENATE BILL 648: Giving notice of public hearings regarding the regulation of business of railroads to the Montana consumer counsel--make availability of Montana consumer counsel in notice hearing.

This bill was deferred for action on Wednesday, February 6.

CONSIDERATION OF SENATE BILL 670: Making certain acts of brewers illegal--and providing that all agreements, contracts or franchises be filed with the Montana Liquor Control Board.

Senator DeVine, author, supported the bill. Al Dougherty, Montana Beer Wholesalers Association, stated that Section 3 was vital to a beer wholesaler. The problem arises because of cancellations of beer wholesalers..

Business and Industry Meeting

February 4, 1974

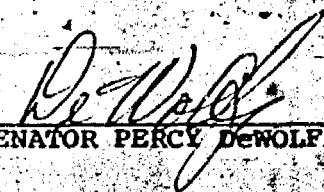
W. J. Shoemaker, Mustang Beverage, Billings, appeared in support of the bill stating that he was one beer wholesaler that had previously been cancelled out and did not receive any benefits. Leon J. Messerly, Rudy's, Bozeman, appeared in support of the bill.

John Risken, U. S. Brewer's Association, appeared in opposition to the bill and supplied the committee with written testimony.

DISPOSITION ON SENATE BILL 624:

A sub-committee was appointed to Senate Bill 624, Senators Drake and DeWolfe are on the committee.

ADJOURN: There being no further business, the meeting was adjourned at 12:45 p.m.


CHAIRMAN, SENATOR PERCY DEWOLFE

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date - 2-4-74

NAME	PRESENT	ABSENT	EXCUSED
Vice-Chairman McGowan	X		
Fred Broeder	X		
Jack DeVine	X		
Miles Romney	X		
Frank Hazelbaker	X		
Glen Drake	X		
P. J. Keenan	X		
William Lowe	X		
Jimmy Shea	X		
Antoinette Rosell	X		
Chairman Percy DeWolfe	X		

DATE February 4, 1974

COMMITTEE ON BUSINESS AND INDUSTRY

BILL NO. 624, 648, 658, 670

VISITOR'S REGISTER

[illegible]

STATEMENT OF UNITED STATES BREWERS ASSOCIATION, INC., IN
OPPOSITION TO SB 670.

I am John H. Risken, an attorney with offices in Helena, and the registered lobbyist for the United States Brewers Association, Inc. The members of this Association manufacture approximately 85% of the beer sold in this country.

We oppose SB 670, the wholesalers' franchise act, for many reasons, some of which were given to the Committee at the time the Bill was heard on Feb. 4. As I explained to the Committee, because of the confusion in the scheduling of this hearing, it was not possible for me to present a prepared statement at that time. I appreciate the Committee's willingness to allow me to do so now.

The Committee was advised by proponents that this Bill is not a model bill. Other jurisdictions have on their books laws somewhat like that being proposed, but that is not to say that such laws are justified or good. We can only guess at what peculiar circumstances existed that brought them into being. We submit that such circumstances do not exist in Montana.

This Bill, proposed by the Montana Beer Wholesalers Association, is truly special interest legislation. It can serve no purpose other than to benefit a particular segment of industry. A close look at the Bill shows that:

1. It makes it unlawful for a brewer to designate more than one wholesaler to distribute a specific brand to retailers in the same area;
2. It would prevent a brewer from terminating without

cause on any agreement existing on January 1, 1974, apparently without regard for the provisions of the agreement;

3. It would require that all franchise agreements contain provisions establishing territorial allocation, brands to be sold, exclusive right for wholesalers to establish prices, procedures for review of alleged wholesaler deficiencies, and a 60 day notice of termination;
4. It provides that a wholesaler may sell his business to any person, members of his family, heirs, or legatees, provided the consent of the brewer is obtained, which consent shall not unreasonably be withheld;
5. It provides for injunctive relief at the instance of a wholesaler who is adversely effected by the cancellation.

We are unaware of similar legislation or laws that have to do with other businesses in which franchises are granted by one party to another for the purpose of merchandising the manufacturers products. Why is it necessary here?

This type of legislation, with a special interest behind it, is detrimental to business for various reasons, three of which are:

There is no threat to public health, welfare, morals, or safety, justifying the intervention of the state as a third party into the contract between brewer and wholesaler, which contracts are entered into freely by the contracting parties.

B. It is not in the public interest for the state to legislate for the benefit of one segment of an industry by imposing unreasonable burdens on other segments of that industry.

C. Legislation of this type is designed to protect the inefficient and non-productive beer wholesaler. Efficient wholesalers do not need a law to continue to do business with their brewery suppliers. Most have done business with their suppliers for many years and have prospered.

I want to emphasize that brewers need to seek stability in their relationship with wholesalers, because turn-overs in wholesalers are disruptive and expensive. Termination of the brewer-wholesaler relationship is a last resort measure, normally after repeated efforts to resolve the then-existing problems.

The conduct of the brewer-wholesaler relationship is generally in accordance with a written agreement between the parties. The beer business is highly competitive, and its conduct should be the concern of the interested parties, not the Legislature. A law making body should not be called upon to write a contract for one part of one industry. If it would do so for the wholesalers, it is not out of the realm of possibility that it will be called upon to write contracts for such outlets as McDonald's, Samba's, and Kentucky Fried Chicken.

The provisions of these contracts should be left to the contracting parties. Each contract should be based on the individual requirements of the brewer and its wholesaler.

The cause for termination is a matter better left to them, and to their lawyers. The right to contract should not be

abrogated or compromised by an act of the Legislature.

There is no need for restrictive or punitive legislation, which, in the final analysis, could jeopardize what progress has been made in fostering and maintaining amicable relationships existing between brewers and wholesalers.

The Bill provides that there must be "just cause" if there is, to be a cancellation. This term is extremely difficult to define; it is vague and unspecific, and it is strictly a subjective test and difficult of ascertainment as applied to the terms of any agreement. It legislatively imposes an overriding and controlling contractual condition in current agreements which go beyond the agreement of the parties.

That a brewer may consider "just cause" may be at complete variance with what a wholesaler may consider that term to

mean.

The U.S. Court of Appeals in Pennaria v. Ridge Tool Co., 423 F. 2d 563, in construing a Puerto Rican franchise law governing relations between all manufacturers and their distributors and wholesalers held that the Puerto Rican "dealers contract law", pursuant to which a manufacturer could never terminate regardless of provisions of the contract between the parties, or refuse to renew a dealers if upon expiration date except for "just cause", gave rise to constitutionally impermissible retroactive alteration of contractual provisions. The Court considered the constitutional provision prohibiting impairment of contracts and the due process clause of the constitution, and it stated:

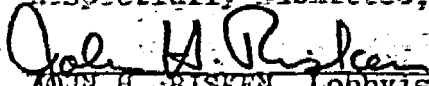
"By labeling the exercise of expressed contractual rights 'unjust' the Legislature was not giving a cause of action for contractual abuse; it was re-writing the contract."

Testimony was heard by the Committee from one wholesaler who had been terminated, in accordance with the terms of an agreement he had freely and voluntarily entered into with a brewer. He took this to court and the Montana Supreme Court held against him. The Court, in effect, said that he was bound by the provisions of the contract he had entered. If a contract can be interpreted in a way other than that expressed in writing, it is a useless piece of paper. It further said that the agreement between the parties was not a "dealership", but that only the relationship of buyer and seller existed. Mustang Beverage Co. v. Jos. Schlitz Brewing Co., et al., 23 St. Rep. 535 (1973).

It should be pointed out that during the period that a termination is taking place, the wholesaler can irreparably damage the business of the brewer in the area concerned by failing or refusing to market the product and taking the necessary steps to keep the business of the brewer going. The successor to the terminated wholesaler could find himself in the position of starting all over again to create a market for the product. Injunction may take many months to resolve.

When there is a dispute between a brewer and a wholesaler, the Courts of Montana are always open to the dissatisfied party.

Respectfully submitted,


JOHN H. RISKEN, Lobbyist for
United States Brewers Association,
Inc.

Business and Industry Meeting

February 11, 1974

DISPOSITION OF SENATE BILL 670:

Senator DeVine reported that the bill would be ready to be reported on Friday.

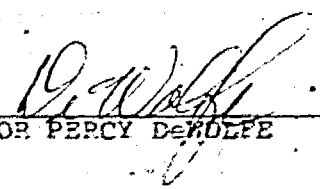
DISPOSITION OF SENATE BILL 658:

Senator McGowan reported that Senate Bill 658 could cause more trouble for those concerned.

Senator Drake moved that the amendments BE ADOPTED and Senator DeVine seconded the motion. Motion carried.

Senator Lowe moved that Senate Bill 658 AND AS AMENDED DO NOT PASS and Senator Hazelbaker seconded the motion. Motion carried.

ADJOURN: There being no further business, the meeting adjourned at 12:20 p.m.


CHAIRMAN, SENATOR PERCY DERULPE

Business and Industry Meeting

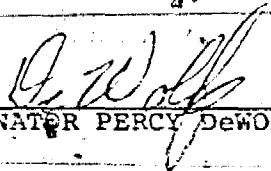
February 15, 1974

CONSIDERATION OF SENATE BILL 670: Making certain acts of brewers illegal--and providing that all agreements, contracts or franchises be filed with the Montana Liquor Control Board.

DISPOSITION OF SENATE BILL 670:

Senator DeVine moved that the bill DO PASS and Senator Drake seconded the motion. Motion carried.

ADJOURN: There being no further business, the meeting was adjourned at 12:10 p.m.


CHAIRMAN, SENATOR PERCY DEWOLFE

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date 2-15-74

NAME	PRESENT	ABSENT	EXCUSED
Vice-Chairman McGowan	X		
Fred Broeder	X		
Jack DeVine	X		
B. J. Goodheart Wiles Romney			X
Frank Hazelbaker	X		
Glen Drake	X		
P. J. Keenan	X		
William Lowe			X
Jimmy Shea			X
Antoinette Rosell	X		
Chairman Percy DeWolfe	X		

Business and Industry Committee

March 4, 1974.

Page 2.....

SB 670 - Senator Devine, chief sponsor, introduced Al Dougherty, who explained the bill. The bill would set contract provisions, allow transfers of interest in wholesaler business, delineate when a contractual relationship exists, grant injunctive relief and provide that all agreements, contracts or franchises be filed with the department of revenue. Other proponents included Chan Libbey, Sr., Leon J. Messerly and Glenn R. Fink. The United States Brewers Association opposed the bill (see attachment).

SJR 63 - Rep Manuel moved that SJR 63 BE CONCURRED IN. The motion was withdrawn. Rep Selstad moved to amend SJR 63 in the title on page 1, line 5, after the word "MONTANA" by omitting the word "DIRECTING" and inserting in lieu thereof the word "REQUESTING". The motion passed. Rep Manuel then moved that SJR 63 AS SO AMENDED BE CONCURRED IN. The motion carried. Rep Manuel will carry it on the floor.

SB 649 - Rep Harper moved that SB 649 BE CONCURRED IN. Rep Swanberg seconded and the motion passed. Rep Harper will carry it on the floor.

SB 694 - Rep Kessner moved that SB 694 BE NOT CONCURRED IN. Rep Harper made a substitute motion that SB 694 BE CONCURRED IN. Rep Quilici seconded and the motion carried with Reps Kessner and Selstad voting no. Rep Quilici will carry it on the floor.

SB 570 - Rep Swanberg moved that SB 570 BE NOT CONCURRED IN. The motion carried with Reps Kessner, Manuel and Laas voting no and Reps Driscoll and Quilici abstaining.

SB 670 - Rep Lien moved that SB 670 BE NOT CONCURRED IN. Rep Regan made a substitute motion to hold SB 670 until Wednesday, March 6. The motion was then withdrawn. Roger Tippy, Legislative Council, submitted an amendment (attached). Rep Swanberg moved the adoption of the amendment. The motion passed. Rep Swanberg then moved that SB 670 AS SO AMENDED BE CONCURRED IN. The motion carried with Reps Driscoll, Lien and Selstad voting no. Rep Swanberg will carry it on the floor.

SB 679 - Rep Regan moved to amend SB 679 on page 1, section 1, after the word "chapter" on line 18, by reinserting the stricken material as follows: "except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years duration". Rep Lien seconded and the motion carried. Rep Regan moved that SB 679 AS SO AMENDED BE CONCURRED IN. The motion carried with Reps Kessner and Selstad voting no and Reps Driscoll and Manuel abstaining. Rep Regan will carry it on the floor.

The meeting adjourned at 12:15 p.m.

WITNESS STATEMENT

Name CHAS Leibert, Sr Date 3/4/74
 Address Box 1245, Bismarck, Mont 59715 Support ? ☒
 Representing CARDINAL DISTRIBUTING Co Oppose ? ☐
 Which Bill ? S.B. 570 + 670 Amend ? ☐

Comments:

The bill will make it possible for the beer wholesaler to more closely be in a position of being an independent businessman - often a brewery will have a standing policy of taking 50% of any price increase in the wholesaler's operation.

The opponents say the breweries are interested in keeping all margins the same - who are they and by what legal means are they in a position to cut wholesalers margins - or to control prices.

Promotions gone will have played a great part in the shrinkage of brewing in operation - 20 years ago approximately 580 breweries operating - now approx. 40.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name LEON J. MESSERLY Date 3-1-74

Address Box 802 Support ? ☒

Representing _____ Oppose ? ☐

Which Bill ? SB # 570 & SB # 670 Amend ? ☐

Comments:

SB # 570 Deals with brewery pricing practices. Present policy by some breweries is to control the margin of profit of their distributors in each distribution area by adjusting the f.o.b. brewery price. It is common practice today for a brewery to come in and take 1/4 or all of a raise which a wholesaler deems necessary.

SB # 570 sets forth good business policy & should be supported.

SB # 670 Deals with franchising the brewery wholesaler relationship. Today, beer is purchased from breweries on an order to order basis. Breweries may, by canceling your orders, cancel out a distributorship without due or advanced notice. The bill will not take away the breweries right to cancel out a wholesaler but would give the wholesaler an opportunity to salvage his business or at least the market value of his business. Again, I ask your support.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Glenn R. FinkDate 3-4-74Address P.O. Box 416 Billings, MontanaSupport ? ☒

Representing _____

Oppose ? _____

Which Bill ? SB 520 SB-670

Amend ? _____

Comments: SB-520

At The Present Time, There Is Discrimination
Against Beer Wholesalers, In Prices To The
Wholesaler. We Feel, All Beer Wholesalers
Should Be Entitled To Purchase Their Beer
At Equal Prices.

We Also Feel That All Prices Should Be
Posted For ⁶⁰~~10~~ Days With The Liquor Administration.

SB-670

To Many Times A Beer Wholesaler Can Be
Canceled On His Franchise Without Having
A Hearing. This Is To Protect The Wholesaler
Up To A Point.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name AL DOUGHERTY

Date 4 Mar 1974

Address 14 N. Jackson - Helena

Support ? ☒

Representing Mont. Beer Wholesalers' Assn

Oppose ? ☐

Which Bill ? S.B. 670

Amend ? ☐

Comments:

Please leave prepared statement with the committee secretary.

LAW OFFICES
RISKEN & O'LEARY
POWER BLOCK
HELENA, MONTANA

JOHN H. RISKEN
WILLIAM E. O'LEARY

P. O. Box 211
443-2219
Area Code 406

March 2, 1974

Rep. John Mehrens, Chairman
Business and Industry Committee
House of Representatives
Capitol Building
Helena, Montana 59601

Re: Senate Bill 670

Dear Sandy:

I represent the United States Brewers Association, the members of which manufacture approximately 85% of the beer sold in the United States. I wanted to let you know that we oppose this Bill. I appeared before the Senate Committee when it was heard there, but I will not be able to appear before your Committee on Monday at 10 a.m. when this is now scheduled for hearing. The reason is that I have a trial in the District Court which is set to start at the same time. Therefore, I am taking this means of letting you know of our opposition to the Bill and the reasons therefor.

This Bill is the Montana Beer Wholesalers' Franchise Act. As far as I know, it is not a model bill and is not patterned after others that now exist in some other states. The fact that such laws exist elsewhere does not make such a law good for Montana-business. SB 670 is special interest legislation. It can serve no other purpose than to benefit a particular segment of industry, the wholesalers. The Bill makes it illegal for a brewer to designate more than one wholesaler to distribute a particular brand to retailers in a certain area; it prevents a brewer from terminating without cause on any agreement existing on Jan. 1, 1974, without regard for what might be contained in the existing agreement between the brewer and wholesaler; it actually writes the contract that will exist between the brewer and wholesaler by making it contain provisions establishing territorial allocation, brands to be sold, exclusive rights for wholesalers to establish prices, procedures for review of alleged wholesaler deficiencies, and a 60 day notice of termination. It provides that a wholesaler can sell his business to anyone, provided the consent of the brewer is obtained, which consent cannot be unreasonably withheld.

March 2, 1974

It also provides for injunctive relief at the instance of a wholesaler who is adversely affected by a termination.

I do not know of any other laws in Montana that have to do with franchises granted by one party to another. This type of legislation, with a special interest behind it, is detrimental to business for many reasons, some of which are:

There is no threat to public health, welfare, morals, or safety justifying the intervention of the State as a third party into the contract between a brewer and a wholesaler; such contracts as now exist are entered into freely by the contracting parties.

It is not in the public interest for the State to legislate for the benefit of one segment of an industry by imposing unreasonable burdens on other segments of that same industry.

Legislation of this kind is designed to protect the inefficient and non-productive beer wholesaler. Efficient wholesalers do not need a law to continue to do business with their brewery suppliers. Most wholesalers have done business with their suppliers for many years without such a law, and they have prospered.

I want to emphasize that brewers want stable relations with their wholesalers. Replacing wholesalers is expensive and it disrupts business. Termination of a wholesaler is the last resort, normally after many attempts have been made to resolve the existing problems:

The conduct of the brewer-wholesaler relationship is generally in accordance with a written contract between them. The beer business is highly competitive, and its conduct should be the concern of the interested parties, and not the Legislature. A law making body should not be called upon to write a contract for one part of an industry. If it would do so, maybe it will be called upon to write contracts for franchises concerning McDonald's Hamburgers, Sambo's and Kentucky Fried Chicken.

The provisions of these brewer-wholesaler contracts should be left to the contracting parties. Each agreement should be based upon the individual requirements of the brewer and its wholesaler. The cause for termination should be left to them and to their lawyers. The right to contract should not be abrogated or compromised by an act of the Legislature. There is no need for restrictive or punitive legislation which, in the final analysis, could jeopardize what progress has been

March 2, 1974

made in fostering and maintaining amicable relationships existing between the brewers and the wholesalers.

I expect that something will be said to the effect that the "little" wholesalers are in an unfavorable bargaining position with the "big" brewers. This is just not so. We grant that the brewers are large companies, but they want efficient and productive wholesalers taking care of their markets. The more money a wholesaler makes for himself, the more of the brewer's product he is selling. If the brewers do not have efficient wholesalers, they go out of business; both brewers and wholesalers.

The Bill provides that there must be "just cause" if there is to be a cancellation. This term is extremely difficult to define. It is vague and unspecific, and it is strictly a subjective test and difficult of ascertainment as applied to the terms of any agreement. It legislatively imposes an overriding and controlling contractual provision in current agreements (those now existing) which go beyond the intent of the parties. What a brewer may consider 'just cause' may be entirely different than what a wholesaler considers it to be.

Such a law may very well be unconstitutional. The U.S. Court of Appeals, in Fornaris v. Ridge Tool Co., 423 F. 2d 563, in construing a Puerto Rican franchise law governing relations between all manufacturers and their distributors and wholesalers held that the law, pursuant to which a manufacturer could never terminate regardless of the provisions in the contract between the parties, or refuse to renew a dealership upon expiration date except for 'just cause', gave rise to constitutionally impermissible retroactive alteration of contractual provisions. The Court considered the constitutional provision prohibiting impairment of contracts and the due process clause of the constitution, and it stated:

"By labeling the exercise of expressed contractual rights 'unjust' the Legislature was not giving a cause of action for contractual abuse; it was rewriting the contract."

In the Senate Committee hearing, there was testimony by a wholesaler who claimed he was terminated. However, the Montana Supreme Court, in Mustang Beverage Co. v. Jos. Schlitz Brewery, et al., 30 St. Rep. 565 (1973), said that there was no "dealership" existing, and that the relationship was merely that of buyer and seller.

I would like to point out that during the time that a termination is taking place, a great deal of harm can be done to the market

Rep. John Mehrens
Page 4

March 2, 1974

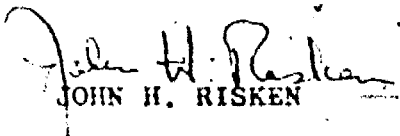
for a particular brand because of the time involved. During this time, the wholesaler could refuse or fail to market the product. The successor to the terminated wholesaler could find himself in the position of starting all over again, instead of taking over a going business. Injunction may take many months to resolve.

Finally, the present laws are adequate to protect a dissatisfied wholesaler. He can always take a brewer to Court, as was done in the Mustang Beverage Co. case, above. That is what the laws and the courts are for.

I am transmitting copies of this to several others on your Committee. I apologize that I was not able to have sufficient copies reproduced so that each Committee member could have one, but I did not learn of your hearing until this morning, Saturday, and my reproduction source is closed down until Monday morning, which would not allow me enough time.

I hope your Committee does not concur in this Bill.

Sincerely,


JOHN H. RISKEN

cc: Joe Quilici
Tom Selstad
Walter Laas

Amend Senate Bill 670 in section 1, subsection (4), page 2, line 7, after the word "to" by deleting the following material: "unfairly cancel or terminate, without due regard to the equities of the wholesaler or without just cause or provocation, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into, to sell beer manufactured by the brewer.", and inserting in lieu thereof the following material: "cancel or terminate except for just cause or in accordance with the current terms and standards established by the brewer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into, to sell beer manufactured by the brewer. A brewer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer cancels or terminates a wholesaler's franchise, the brewer has the burden of proving the classification was reasonable and not arbitrary.", and

Section 7. Section 66-2910, R.C.M. 1947, is amended to read as follows:

"66-2910. **Disposition of fees — receipts and disbursements.** All examination and renewal fees received by the board under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the state treasurer shall place all money so received in an account in the earmarked revenue fund to the credit of the board and shall pay the same out in warrants drawn by the state auditor, upon approved vouchers issued and signed by the president and secretary-treasurer of said board. All money so received and placed in said fund may be used by the board in defraying their expenses in carrying out the provisions of this act.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year, shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of *twenty-five* dollars (\$25) for each day during which they shall be actually engaged in the discharge of their duties, and mileage *as set forth in section 59-801, R.C.M. 1947* for each mile necessarily traveled in going to and from any meeting of said board.

Per diem and mileage and all other expenses necessarily connected with said board shall be paid only out of the earmarked revenue fund of the board."

Section 8. Section 66-2914, R.C.M. 1947, is amended to read as follows:

"66-2914. **Exemptions.** The following classes of persons are exempt from this act:

1. Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic or chiropody.

2. Persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers or cosmetologists.

3. *Educational institutions maintaining a full-time faculty with a varied curriculum.*

4. *Athletic clubs and others who apply for and acquire from the board an exemption. Such an exemption may be granted or denied at the discretion of the board in carrying out the purposes of this act.*

5. *Those persons who may have qualified for exemption under prior law shall be required by this act to qualify for exemption in the manner stated in this section before their exemption may be continued."*

Approved March 28, 1974

CHAPTER NO. 322

AN ACT MAKING CERTAIN ACTS OF BREWERS ILLEGAL; PROVID-

ING MANDATORY CONTRACT PROVISIONS; ALLOWING TRANSFERS OF INTEREST IN WHOLESALER BUSINESS; DELINEATING WHEN A CONTRACTUAL RELATIONSHIP EXISTS; GRANTING INJUNCTIVE RELIEF; AND PROVIDING THAT ALL AGREEMENTS, CONTRACTS OR FRANCHISES BE FILED WITH THE DEPARTMENT OF REVENUE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 4-317.2, R.C.M. 1947, which reads as follows:

4-317.2. **Illegal acts by brewers defined.** It is unlawful for any brewer or any officer, agent or representative of any brewer:

(1) to coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale, to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state, or any rules promulgated by the department of revenue;

(2) to sell its products in the state without a written contract which conforms to the provisions of this act with each appointed licensed wholesale distributor;

(3) to designate or allow more than one (1) wholesale distributor to sell or distribute a specific brand of the brewer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer from designating more than one (1) wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) to cancel or terminate except for just cause or in accordance with the current terms and standards established by the brewer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into, to sell beer manufactured by the brewer. A brewer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer cancels or terminates a wholesaler's franchise, the brewer has the burden of proving the classification was reasonable and not arbitrary. After its effective day, this act shall be a part of any franchise, contract or agreement or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer.

Section 2. There is a new section to be numbered 4-317.3, R.C.M. 1947, which reads as follows:

4-317.3. **Contracts, agreements, franchises — mandatory provisions.** All contracts, agreements or franchises between a brewer and a wholesaler shall specifically set forth or contain the following:

(1) The brewer, or any officer, agent or representative of any brewer,

and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer, and may not be changed without the mutual consent of both the wholesaler and brewer.

(2) The agreed upon brands of the brewer to be sold by the wholesaler.

(3) The brewer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best, and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's products handled by the wholesaler.

(4) A procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate.

(5) A termination clause providing that the brewer shall deliver, in writing, to the wholesaler a sixty (60) day notice of intent to terminate the agreement, contract or franchise.

Section 3. There is a new section to be numbered 4-317.4, R.C.M. 1947, which reads as follows:

4-317.4. **Transfer of interest in business.** A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person, or to one or more members of his family, or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation: Provided, however, the consent of the brewer in writing is required for such transferee to continue as a wholesaler of said brewer, which consent shall consider the personal, financial and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

Section 4. There is a new section to be numbered 4-317.5, R.C.M. 1947, which reads as follows:

4-317.5. **Contractual or franchise relationship — existence by actions.** The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship within the contemplation of this act, as between a licensed wholesaler and a brewer:

(1) The shipment, the preparation for shipment or acceptance of any order by any brewer or its agent for any beer to a licensed wholesaler within this state.

(2) The payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or its agent for the shipment of an order of beer intended for sale within this state.